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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ARNOLD EUGENE GUTIERREZ,

Defendant and Appellant.

E072092

(Super.Ct.No. CR37300)

OPINION

APPEAL from the Superior Court of Riverside County. John D. Molloy, Judge.
Affirmed.

Rex Adam Williams, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance by Plaintiff and Respondent.

Defendant and appellant, Arnold Eugene Gutierrez, filed a petition for resentencing pursuant to Penal Code section 1170.18,¹ which the court denied. After defendant filed a notice of appeal, this court appointed counsel to represent him.

Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the facts and statement of the case. We affirm.

I. PROCEDURAL BACKGROUND

On February 1, 1991, defendant pleaded guilty to second degree burglary (Count 1; § 459) and admitted that he had suffered a prior prison sentence.² The court struck the prior prison term enhancement and sentenced defendant to two years of imprisonment on the burglary offense.

On October 12, 2018, defendant filed a petition pursuant to section 1170.18 seeking to reduce his felony burglary conviction to a misdemeanor. The People filed opposition to the petition arguing defendant failed to meet his burden to establish eligibility for resentencing. The court responded that in order to rule on the petition it “need[ed] facts.” The court appointed counsel for defendant and set a hearing on the matter for December 20, 2018. At the hearing, the court agreed with the People’s argument that defendant had failed to carry his burden; the court denied the petition.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Defendant concurrently pleaded guilty to first degree burglary in another case.

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

III. DISPOSITION

The judgment is affirmed.

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McKINSTER

Acting P. J.

We concur:

CODRINGTON

J.

MENETREZ

J.